

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 12/8/04 Item: 3.g.

File Number  
CP 04-051/V04-006

Application Type  
Conditional Use Permit/Development  
Exception

Council District  
6

Planning Area  
Willow Glen

Assessor's Parcel Number(s)  
439-52-084

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Ed Schreiner

Location: Northwest corner of Cottle Ave and Dry Creek Rd

Gross Acreage: 1.5

Net Acreage: 1.5

Net Density: N/A

Existing Zoning: R-1-8 Residence

Existing Use: Church

Proposed Zoning: No change

Proposed Use: Church and wireless communication facility

### GENERAL PLAN

Completed by: Ed Schreiner

Land Use/Transportation Diagram Designation  
Medium Low Density Residential (8 DU/AC)

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: Ed Schreiner

North: Single-family detached residential

R-1-8 Residence and A(PD) Planned Development

East: Single-family detached residential

R-1-8 Residence

South: Willow Glen High School

R-1-8 Residence

West: Single-family detached residential

R-1-8 Residence

### ENVIRONMENTAL STATUS

Completed by: Ed Schreiner

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: Ed Schreiner

Annexation Title: Meridian No. 10

Date: November 6, 1958

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval  
☐ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date: \_\_\_\_\_  
[ ] \_\_\_\_\_

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANT

David Ney, Nextel Communications  
1255 Treat Blvd, Suite 220  
Walnut Creek, CA 94596

### CONTACT

Evan Shepherd, Tetrattech Wireless  
P.O. Box 3867  
Santa Cruz, CA 95063

### OWNER

Central Pacific Dist. Christian & Missionary  
715 Lincoln Ave  
Woodside, CA 95695

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: Ed Schreiner

Department of Public Works

No comments.

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Other Departments and Agencies

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See attached.

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**GENERAL CORRESPONDENCE**

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None received.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The developer, Nextel Communications, is requesting a Conditional Use Permit to allow a wireless communication facility, including 12 wireless communication panel antennas, inside a new 50-foot tall church steeple. The related equipment will be located on the second floor interior of the church. The Zoning Ordinance requires a Conditional Use Permit for wireless communication antennas in the R-1-8 Residence Zoning District. A Development Exception is required for the church steeple, which exceeds the 35 foot height limit in the R-1-8 Zoning District.

The Bayside Community Church is located on the site. The balance of the site consists of a large church building and associated parking. The site is bounded by adjacent single-family residential uses to the north, east and west and by Willow Glen High School to the south.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

**Project Description**

The proposed church steeple is 50 feet in height, (15 feet higher than the existing church roofline), and 16 feet, 4 inches wide. It is proposed to contain 12 wireless communication panel antennas. The steeple walls, trim and roof will match the existing church structure on the property. The steeple will be located on the east side of the building, close to the church's frontage on Cottle Road.

The equipment will be located on the interior of the church on the second floor. Power and telecommunications routing will connect through the roof and attic of the church to an existing generator on the site. A new Nextel emergency generator receptacle (unto which a temporary generator could be plugged) is proposed near the center of the church building, near the existing generator.

## **ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act. The Environmental Quality Act Section 15301(e)(1), which exempts additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

## **GENERAL PLAN CONFORMANCE**

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC). The steeple and wireless communication facility conform to the 50-foot height limit of the General Plan.

## **PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties within 500 feet of the project site. Planning staff has received no public comments in regards to the proposed project.

## **ANALYSIS**

The primary issue analyzed is conformance to the Zoning Code and to Council Policy 6-20, *Land Use Policy for Wireless Communications Antennas* (attached).

### **Zoning Code Conformance of the Steeple**

The primary Zoning Code conformance issue with this site is height. The R-1-8 Residence Zoning District has a maximum height of 35 feet. The proposed steeple is 50 feet in height. The Zoning Code allows church steeples to exceed the height limits of any Zoning District with a Development Exception. With approval of the Development Exception included in the Draft Conditional Use Permit, the height of the proposed steeple will conform to the requirements of the Zoning Code.

### **Council Policy 6-20**

Council Policy 6-20 provides guidance for siting wireless communication facilities in regard to visual impacts, height, setbacks and parking.

#### *Visual Impacts*

Council Policy 6-20 states that such facilities should be “located to minimize visual impacts and should be architecturally integrated into the structure.” Building new architectural elements, such as church steeples, to camouflage antenna installations is encouraged. “Equipment areas should be screened as appropriate” and may be screened within built structures, but must conform to setback requirements for the underlying zoning district.

The project proposes to minimize visual impacts by mounting antennas within a new steeple. Associated equipment will be located in the interior of the church. All proposed additions to the site conform to setback requirements for the R-1-8 Residence Zoning District.

### *Height*

The Council Policy states that antenna installations should conform to General Plan and Zoning Ordinance height restrictions. As indicated above, the proposed steeple and wireless communication facility conform to the General Plan height limit of 50 feet.

In addition to the Development Exception provisions applicable to the proposed steeple, the Zoning Ordinance allows the maximum height of building-mounted wireless communication antennas to exceed the maximum height of the zoning district in which it is located provided that the overall height of the building or structure, including antennas, does not exceed sixty (60) feet, the antenna is architecturally integrated into the building and all ancillary equipment is screened, and the antenna does not add to the visual clutter of the building or structure. The new steeple is 50 feet in height and the antennas are proposed to be completely concealed within the steeple in conformance with Zoning Code requirements.

Based on this analysis staff has concluded that the proposed facility is in conformance with the Council Policy in regard to height.

### *Setbacks from Residential Uses*

Council Policy 6-20 states that “Building- or structure-mounted antennas should be located a minimum of 35 feet horizontally from any property with a single-family attached or detached residential use.” The subject site is surrounded by single-family detached residential uses and Willow Glen High School to the south. The antennas will be concealed within a steeple and the steeple will be located on the eastern part of the site. The steeple will be over 50 feet away from any adjacent residential use, as identified by the 50-foot radius circle on the site plan sheet in the plan set.

### *Parking*

The Council Policy for wireless communication states that such facilities should not reduce existing parking on the site. The proposed project does not reduce existing parking.

### **Conclusion**

For the reasons stated above, staff concludes that the subject proposal is consistent with the Zoning Ordinance and Council Policy 6-20 and is compatible with the surrounding neighborhood.

### **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and Development Exception and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The developer, Nextel Communications, is requesting a Conditional Use Permit to allow a wireless communication facility, including 12 wireless communication panel antennas, inside a new 50-foot tall church steeple. The related equipment will be located on the second floor interior of the church.

2. The site is in the R-1-8 Residence Zoning District.
3. The Zoning Ordinance requires a Conditional Use Permit for wireless communication antennas in the R-1-8 Residence Zoning District.
4. The Bayside Community Church is located on the site. The balance of the site consists of the large church building and some associated parking.
5. The site is bounded by adjacent single-family residential uses to the north, east and west and by Willow Glen High School to the south.
6. The proposed church steeple is 50 feet in height, (15 feet higher than the existing church roofline), and 16 feet, 4 inches wide. It contains the 12 wireless communication panel antennas. The steeple walls, trim and roof will match the existing church structure on the property.
7. The steeple will be located on the east side of the building, close to the church's frontage on Cottle Road.
8. The associated equipment will be located on the second floor interior of the church.
9. Under the provisions of Section 15301(e)(1) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review.
10. The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC).
11. The subject wireless communication antenna is proposed to be located in the R-1-8 Residence Zoning district. The Zoning Ordinance allows wireless communication antennas in this district with a Conditional Use Permit.
12. The proposed steeple exceeds the height limitations for the R-1-8 Residence Zoning district. A Development Exception is permitted for Church steeples to exceed the height limits prescribed by the Zoning Code.
13. Council Policy for wireless communication states that such facilities should be "located to minimize visual impacts." The project proposes to minimize visual impacts by mounting antennas within a new steeple. Associated equipment will be located on the interior of the church.
14. The steeple conforms to setback requirements for the R-1-8 Residence Zoning District.
15. The new steeple is 50 feet in height. The antennas will be completely concealed within the steeple and staff has concluded that the facility (with approval of a Development Exception) is in conformance with the Zoning Code and Council Policy in regard to height.
16. Council Policy 6-20 states that "Building- or structure-mounted antennas should be located a minimum of 35 feet horizontally from any property with a single-family attached or detached residential use." The antennas will be concealed within a steeple and the steeple will be located near the

eastern end of the site. The steeple will be over 50 feet from all adjacent residential uses.

17. The project does not reduce the existing on-site parking.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the condition set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.
4. The exception, subject to any conditions as may be imposed thereon, will not impair:
  - a. the utility or value of adjacent property or the general welfare of the neighborhood, and
  - b. the integrity and character of the zoning district in which the subject property is situate .

In accordance with the findings set forth above, a Conditional Use Permit and Development Exception to use the subject property for said purpose specified above and subject to each and all of the conditions

hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "South Willow", dated October 20, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24)
2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no on-site exterior lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Steeple Signage.** No signage will be permitted on the steeple.

9. **Colors and Materials.** All building colors and materials must match the existing building colors and materials.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, CP 04-051 shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
11. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
13. **Generators.** This permit does not include approval of emergency back-up generator on the subject site. Approval of an emergency back-up generator would require a subsequent planning permit.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

c: Building Division  
Applicant and property owner